

EXHIBIT 16

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) 1:23-cv-00108-LMB-JFA
et al.,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF

KENDALL OLIPHANT

August 9, 2023

9:32 a.m.

Reported by: Bonnie L. Russo
Job No. 6031956

Veritext Legal Solutions

800-567-8658

973-410-4098

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| <p style="text-align: right;">Page 2</p> <p>1 Videotaped Deposition of Kendall Oliphant 2 held at: 3 4 5 6 Paul, Weiss, Rifkind, Wharton & Garrison, LLP 7 2001 K Street, N.W. 8 Washington, D.C. 9 10 11 12 13 14 15 16 17 18 Pursuant to Notice, when were present on behalf 19 of the respective parties: 20 21 22</p> | <p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (CONTINUED): 2 3 4 Also Present: 5 Glen Fortner, Videographer 6 Michael A. Cannon, Chief Counsel for Economic 7 Affairs, United States Department of Commerce 8 9 Also Present Via Remotely: 10 Julia Wood, DOJ 11 Jeannie S. Rhea, Paul, Weiss, Rifkind, Wharton 12 & Garrison, LLP 13 14 15 16 17 18 19 20 21 22</p> |
| <p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiffs: 4 RACHEL ZWOLINSKI, ESQUIRE 5 VICTOR LIU, ESQUIRE 6 ALVIN CHU, ESQUIRE 7 UNITED STATES DEPARTMENT OF JUSTICE 8 1331 Pennsylvania Avenue, N.W. 9 Washington, D.C. 20005 10 rachel.zwolinski@usdoj.gov 11 12 On behalf of the Defendant: 13 MARTHA L. GOODMAN, ESQUIRE 14 ANNE LISE CORRIVEAU, ESQUIRE 15 PAUL, WEISS, RIFKIND, WHARTON & 16 GARRISON, LLP 17 2001 K Street, N.W. 18 Washington, D.C. 20006 19 mgoodman@paulweiss.com 20 acorriveau@paulweiss.com 21 22</p> | <p style="text-align: right;">Page 5</p> <p>1 I N D E X 2 EXAMINATION OF KENDALL OLIPHANT PAGE 3 BY MS. GOODMAN 12 4 5 6 7 8 9 EXHIBITS 10 11 12 Exhibit 13 E-Mail Chain dated 1-17-23 48 13 CENSUS-ADS-0000244816-818 14 15 16 17 18 Exhibit 14 Integrated Communications 79 19 Contract 20 Version 2 21 10-5-18 22 CENSUS-ADS-0000387420-490 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000</p> |

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| 1 | EXHIBITS (CONTINUED): | | 1 | EXHIBITS (CONTINUED): | |
| 2 | Exhibit 16 E-Mail Chain dated 6-9-20 | 149 | 2 | Exhibit 23 Order 15: Media Buying | 261 |
| 3 | Attachment | | 3 | Process for Census PMO | |
| 4 | CENSUS-ADS-0000168193-195 | | 4 | CENSUS-ADS-0000696413-417 | |
| 5 | | | 5 | | |
| 6 | Exhibit 17 Order 15 - Media Strategy | 154 | 6 | Exhibit 24 Department of Commerce | 268 |
| 7 | 2020 Census Integrated | | 7 | U.S. Census Bureau | |
| 8 | Communications Contract | | 8 | Determination and Findings | |
| 9 | 11-5-18 | | 9 | CENSUS-ADS-0000243622-625 | |
| 10 | CENSUS-ADS-0000709936-991 | | 10 | | |
| 11 | | | 11 | Exhibit 25 E-Mail Chain dated 3-3-20 | 296 |
| 12 | Exhibit 18 2020 Census | 165 | 12 | CENSUS-ADS-0000204155-156 | |
| 13 | Integrated Communications | | 13 | | |
| 14 | Campaign Update | | 14 | Exhibit 26 E-Mail Chain dated 7-7-22 | 274 |
| 15 | Congressional Staff Briefing | | 15 | CENSUS-ADS-0000709244-246 | |
| 16 | 5-1-20 | | 16 | | |
| 17 | CENSUS-ADS-0000094975-010 | | 17 | Exhibit 27 E-Mail Chain dated 9-2-22 | 279 |
| 18 | | | 18 | Attachment | |
| 19 | | | 19 | CENSUS-ADS-0000710075-081 | |
| 20 | | | 20 | | |
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| 22 | | | 22 | | |
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| 1 | EXHIBITS (CONTINUED): | | 1 | EXHIBITS (CONTINUED): | |
| 2 | Exhibit 19 Campaign Optimization | 182 | 2 | Exhibit 28 Order 15: 2020 Census | 288 |
| 3 | Daily Report | | 3 | Paid Media Campaign Final | |
| 4 | 4-3-20 | | 4 | Buy List | |
| 5 | Day 23 of Self-Response | | 5 | 10-30-20 | |
| 6 | CENSUS-ADS-0000709885-897 | | 6 | CENSUS-ADS-0000080950-016 | |
| 7 | | | 7 | | |
| 8 | Exhibit 20 2020 Census Integrated | 199 | 8 | Exhibit 29 United States Census 2020 | 309 |
| 9 | Communications Plan | | 9 | 2020 Census Evaluation Report | |
| 10 | Final Report | | 10 | CENSUS-ADS-0000074490-542 | |
| 11 | 5-27-21 | | 11 | | |
| 12 | | | 12 | Exhibit 30 2020 Census Program Internal | 312 |
| 13 | Exhibit 21 Award/ Contract | 221 | 13 | Memorandum Series: | |
| 14 | 8-24-16 | | 14 | 2023i.01.20c | |
| 15 | CENSUS-ADS-0000273284-378 | | 15 | 1-6-23 | |
| 16 | | | 16 | CENSUS-ADS-0000074369-414 | |
| 17 | Exhibit 22 2020 Census Integrated | 244 | 17 | Exhibit 31 E-Mail Chain dated 12-7-22 | 322 |
| 18 | Communications Contract | | 18 | CENSUS-ADS-0000245053-055 | |
| 19 | Acquisition Plan | | 19 | Exhibit 32 Order for Supplies or | 330 |
| 20 | Master Contract YA1323-16-CQ-0003 | | 20 | Services | |
| 21 | CENSUS-ADS-0000724090-113 | | 21 | CENSUS-ADS-0000075450-493 | |
| 22 | | | 22 | (Exhibits bound separately.) | |

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| <p style="text-align: right;">Page 10</p> <p>1 PROCEEDINGS</p> <p>2 (9:32 a.m.)</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning.</p> <p>5 We are going on the record at 9:32</p> <p>6 on August 9, 2024 -- 2023.</p> <p>7 Please note that the microphones are</p> <p>8 sensitive and may pick up whispering and</p> <p>9 private conversations. Please mute your phones</p> <p>10 at this time. Audio and video recording will</p> <p>11 continue to take place unless all parties agree</p> <p>12 to go off the record.</p> <p>13 This is Media Unit 1 of the</p> <p>14 video-recorded deposition of Kendall Oliphant</p> <p>15 in the matter of United States, et al. v.</p> <p>16 Google LLC. The location of the deposition is</p> <p>17 Paul Weiss.</p> <p>18 My name is Glen Fortner representing</p> <p>19 Veritext, and I am the videographer. The court</p> <p>20 reporter is Bonnie Russo from the firm</p> <p>21 Veritext.</p> <p>22 I am not related to any party in</p> | <p style="text-align: right;">Page 12</p> <p>1 Paul Weiss.</p> <p>2 MS. WOOD: And Julia Wood from DOJ.</p> <p>3 I will be in and out throughout the day.</p> <p>4 THE VIDEOGRAPHER: Will the court</p> <p>5 reporter please swear in the witness, and then</p> <p>6 counsel may proceed.</p> <p>7</p> <p>8 KENDALL OLIPHANT,</p> <p>9 being first duly sworn, to tell the truth, the</p> <p>10 whole truth and nothing but the truth,</p> <p>11 testified as follows:</p> <p>12 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Good morning, Ms. Oliphant.</p> <p>15 A. Good morning.</p> <p>16 Q. Was your last name previously</p> <p>17 Johnson?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Okay. So if we look at documents</p> <p>20 here today that refer to Kendall Johnson, that</p> <p>21 is yourself, correct?</p> <p>22 A. That is myself, yes.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 this action, nor am I financially interested in</p> <p>2 the outcome. If there are any objections to</p> <p>3 proceeding, please state them at the time of</p> <p>4 your appearance.</p> <p>5 Counsel and all present, including</p> <p>6 remotely, will now state their appearances and</p> <p>7 affiliations for the record beginning with the</p> <p>8 noticing attorney.</p> <p>9 MS. GOODMAN: Martha Goodman of Paul</p> <p>10 Weiss on behalf of the defendant, Google LLC,</p> <p>11 and I am joined colleague Annelise Corriveau.</p> <p>12 MS. ZWOLINSKI: Rachel Zwolinski on</p> <p>13 behalf of the United States.</p> <p>14 MR. LIU: Victor Liu on behalf of</p> <p>15 the United States.</p> <p>16 MR. CHU: Alvin Chu on behalf of the</p> <p>17 United States.</p> <p>18 MR. CANNON: Michael Cannon on</p> <p>19 behalf of the United States.</p> <p>20 MS. GOODMAN: And do we have any</p> <p>21 remote attendees?</p> <p>22 MS. RHEE: This is Jeannie Rhee from</p> | <p style="text-align: right;">Page 13</p> <p>1 Q. Have you been deposed before?</p> <p>2 A. Once.</p> <p>3 Q. And was that in connection with your</p> <p>4 work at the census bureau?</p> <p>5 A. No, it was not.</p> <p>6 Q. Okay. When was that deposition?</p> <p>7 A. Thinking. Maybe 2002, 2001, 2002.</p> <p>8 Q. So it's been 20-some odd years?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Just some basic rules of the</p> <p>11 road.</p> <p>12 Your counsel may object. Unless</p> <p>13 they instruct you not to answer the question,</p> <p>14 you should permit your counsel to object and</p> <p>15 then proceed to answer the question. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. And to help Bonnie, our court</p> <p>18 reporter, please wait for me to finish my</p> <p>19 question, wait for your counsel to object, if</p> <p>20 any, and then proceed with your answer so that</p> <p>21 we're not talking over each other. Sound good?</p> <p>22 A. Sounds good.</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. And --</p> <p>3 A. -- that would relate to paid media.</p> <p>4 Q. So am I understanding your testimony</p> <p>5 correctly that Deb made a comment to you that</p> <p>6 sometimes it's not good -- it's good not to be</p> <p>7 aware of things or be an expert in things and</p> <p>8 that that related to paid media; is that right?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 Foundation.</p> <p>11 THE WITNESS: It was an</p> <p>12 acknowledgement of the suit in that I was</p> <p>13 involved, and that's it. I am characterizing</p> <p>14 based on a vague menu -- I mean memory, just</p> <p>15 being honest.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Do you recall when this comment was</p> <p>18 made?</p> <p>19 A. I honestly don't.</p> <p>20 Q. And do you recall the context or the</p> <p>21 conversation in which it came up?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p> | <p style="text-align: right;">Page 32</p> <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: That I manage that</p> <p>3 order. I was the one that had the -- the most</p> <p>4 knowledge of it.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. I see. Based on what you can recall</p> <p>7 sitting here today, is it correct or incorrect</p> <p>8 to say that the side comment that we're</p> <p>9 discussing came up in the context of a</p> <p>10 conversation with respect to who from the</p> <p>11 census bureau would be tasked with</p> <p>12 participating in this lawsuit?</p> <p>13 MS. ZWOLINSKI: Objection. Form.</p> <p>14 THE WITNESS: Can you repeat that,</p> <p>15 please.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Did the side comment that we're</p> <p>18 discussing -- and I am using "side comment" as</p> <p>19 a shorthand -- did that come up in the context</p> <p>20 of a conversation about who from the census</p> <p>21 bureau would participate in this lawsuit?</p> <p>22 A. I don't believe so. That's not -- I</p> |
| <p style="text-align: right;">Page 31</p> <p>1 THE WITNESS: I honestly don't. It</p> <p>2 was appropriate, but I can't recall what else</p> <p>3 was discussed.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And did you understand her comment</p> <p>6 to mean that it's good for you not to</p> <p>7 necessarily be an expert in paid media or for</p> <p>8 who not be an expert in paid media?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 THE WITNESS: I would -- I can't</p> <p>11 assume what she thought. My interpretation was</p> <p>12 that she was not, so that -- I don't know. No</p> <p>13 one wants to be here.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Did you understand that in any way</p> <p>16 as to your expertise in paid media or...?</p> <p>17 MS. ZWOLINSKI: Objection. Form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. And what did you understand her to</p> <p>21 mean with respect to your expertise in paid</p> <p>22 media?</p> | <p style="text-align: right;">Page 33</p> <p>1 don't -- that's not correct.</p> <p>2 Q. Okay. And just for the record, best</p> <p>3 recollection sitting here today, any more</p> <p>4 details about the context in which the side</p> <p>5 comment came up?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. Okay. What is your title?</p> <p>8 A. Chief of the contract management --</p> <p>9 contract program office in the communications</p> <p>10 directorate of the census bureau.</p> <p>11 Q. And for how long have you held that</p> <p>12 position?</p> <p>13 A. Since October of 2021.</p> <p>14 Q. And prior to October 2021, what</p> <p>15 position did you hold at the census bureau?</p> <p>16 A. I was chief of the integrated</p> <p>17 communications, contract program management</p> <p>18 office.</p> <p>19 Q. And what time period did you hold</p> <p>20 the position of chief of the integrated</p> <p>21 communications, contract program management</p> <p>22 office?</p> |

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| <p>1 A. It began in 2016. I don't know the</p> <p>2 exact date or month, but it was through</p> <p>3 September of 2021.</p> <p>4 Q. With respect to your current role as</p> <p>5 chief of the contract management -- sorry. The</p> <p>6 contract program office and the communications</p> <p>7 directorate of the census bureau, do you</p> <p>8 understand the United States lawsuit to be</p> <p>9 based on any work you do in that role?</p> <p>10 MS. ZWOLINSKI: Objection. Form.</p> <p>11 THE WITNESS: I understand it to be</p> <p>12 based on work that was conducted in my previous</p> <p>13 role, not in my current role.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And so we'll focus our time here</p> <p>16 today on your time as the chief of the ICC</p> <p>17 contract program management office.</p> <p>18 A. ICC PMO.</p> <p>19 Q. ICC PMO?</p> <p>20 A. Yes.</p> <p>21 Q. All right. We'll use that</p> <p>22 shorthand. Thank you.</p> | <p>1 task orders under the main contract?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: For context only -- I</p> <p>4 am trying to figure out how best to explain.</p> <p>5 In terms of government contracts,</p> <p>6 management of a contract is actually done --</p> <p>7 you have a contracting officer who is</p> <p>8 ultimately responsible for the contract, and</p> <p>9 they can make decisions that impact scope.</p> <p>10 But then you have a contracting</p> <p>11 officer representative, or COR, who</p> <p>12 administrates the contract.</p> <p>13 The communications contract was so</p> <p>14 large, you had a COR that administered the</p> <p>15 master contract and was ultimately responsible</p> <p>16 for all the -- all the orders, but each order</p> <p>17 had a separate COR.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. I am following you.</p> <p>20 A. Okay.</p> <p>21 Q. In your role, however, in terms of</p> <p>22 program management of the master contract, did</p> |
| Page 35 | Page 37 |
| <p>1 To whom did you report when you were</p> <p>2 chief of the ICC PMO?</p> <p>3 A. Originally I directly reported to</p> <p>4 Stephen Buckner. He was the assistant director</p> <p>5 for communications.</p> <p>6 And then I reported to Burton Reist,</p> <p>7 who was the other assistant director for</p> <p>8 communications. We had two.</p> <p>9 Q. And in your role as chief, who</p> <p>10 reported to you?</p> <p>11 A. I had a staff of approximately 15,</p> <p>12 16 people at any given time.</p> <p>13 Q. What -- describe your job</p> <p>14 responsibilities as chief of the ICC PMO.</p> <p>15 A. I oversaw all things related to -- I</p> <p>16 oversaw the communications contract not as the</p> <p>17 contracting officer's representative but as the</p> <p>18 program officer as well as anything related to</p> <p>19 it. That included program management reports,</p> <p>20 stakeholder engagement, budget, et cetera.</p> <p>21 Q. And did your role as chief of the</p> <p>22 ICC PMO include responsibilities for all of the</p> | <p>1 you have responsibility for managing all of the</p> <p>2 orders issued under that master contract?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 THE WITNESS: I had the</p> <p>5 responsibility of understanding and providing</p> <p>6 guidance and reporting up and down and out, but</p> <p>7 I did not have responsibility for managing the</p> <p>8 orders. Only the COR on the contract can</p> <p>9 manage the orders.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. Sitting here today, what --</p> <p>12 what's your understanding of which task orders</p> <p>13 are relevant to the lawsuit brought by the</p> <p>14 United States?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: Order 8, which was</p> <p>18 recruitment advertising, and Order 15, which</p> <p>19 was media planning and buying.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. And what were your responsibilities</p> <p>22 with respect to Order 8?</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 A. I was aware. I provide guidance, 2 and I worked directly with the COR for that 3 order to -- I said this already but provide 4 guidance in how best to approach certain 5 things. 6 Q. And is your answer with -- the same 7 with respect to Order 15? 8 MS. ZWOLINSKI: Objection. Form. 9 THE WITNESS: With Order 15 I was 10 the COR, so I had the responsibility of 11 managing or administrating or administering 12 that particular order. 13 BY MS. GOODMAN: 14 Q. And who was the COR, contracting 15 office representative -- 16 A. Yes. 17 Q. -- for Order 8? 18 A. James Cole. 19 Q. And have you had any discussions 20 with Mr. Cole about your participation in this 21 lawsuit? 22 MS. ZWOLINSKI: Objection. Form.</p> | <p style="text-align: right;">Page 40</p> <p>1 under his role as COR for Order 8? 2 A. No need. 3 MS. ZWOLINSKI: Objection. Form. 4 THE WITNESS: No need. 5 BY MS. GOODMAN: 6 Q. When you say "no need," what do you 7 mean? 8 A. It was paid media. I knew all about 9 it. 10 Q. Okay. And so as chief of the ICC 11 PMO, did you have any responsibilities 12 pertaining to paid media? 13 A. In that position it was to be aware, 14 to understand, and to be able to report out 15 about decisions that were being made, 16 strategies used, and direction and timing and 17 funding. 18 Q. And how about with respect to your 19 role as the contracting officer representative 20 for Order 15 -- 21 MS. ZWOLINSKI: Objection. Form. 22 BY MS. GOODMAN:</p> |
| <p style="text-align: right;">Page 39</p> <p>1 THE WITNESS: Other than telling him 2 I had provided his name and that he might be 3 contacted, but no detail. 4 BY MS. GOODMAN: 5 Q. And are you aware one way or another 6 whether Mr. Cole has been contacted with 7 respect to this lawsuit? 8 MS. ZWOLINSKI: Objection. Form. 9 THE WITNESS: I believe he was 10 contacted, and it was -- yes, I believe he was 11 contacted. 12 BY MS. GOODMAN: 13 Q. And do you know why he was 14 contacted? 15 MS. ZWOLINSKI: Objection. 16 Foundation. 17 THE WITNESS: Because he was the COR 18 on Order 8 and there was media, paid media, 19 associated with that effort. 20 BY MS. GOODMAN: 21 Q. And have you discussed the paid 22 media at all with James Cole that was -- fell</p> | <p style="text-align: right;">Page 41</p> <p>1 Q. -- what were your responsibilities 2 in that role with respect to paid media? 3 A. As the COR -- I'm going to help you. 4 COR makes it easier on the tongue -- my job was 5 to make sure that the order -- all the 6 requirements of the order were met, that they 7 were met on time within scope and within 8 budget. 9 Q. Were you also detailed to the 10 department of health and human services in the 11 past few years? 12 A. Yes. 13 Q. And what did you do on detail to 14 HHS? 15 A. I served as the strategic director 16 for the public -- public education campaign for 17 COVID-19, and I also served as the COR on the 18 contract for the period of time I was there. 19 Q. Who -- who -- strike that. 20 Did anybody take over your role as 21 COR on the contract at HHS for COVID-19? 22 A. After I left?</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 Q. Correct.</p> <p>2 A. Yes.</p> <p>3 Q. Who was that?</p> <p>4 A. Teresa Bills, B-I-L-L-S.</p> <p>5 Q. And what time period were you</p> <p>6 detailed to HHS?</p> <p>7 A. November 2021 through July 2022.</p> <p>8 Q. And the contract for which you were</p> <p>9 the COR at HHS, what was the length of the term</p> <p>10 for that contract?</p> <p>11 A. So when I started at HHS, it was the</p> <p>12 end of -- the contracts were in six-month</p> <p>13 increments.</p> <p>14 When I started there were -- there</p> <p>15 was a month and a half left in the contract.</p> <p>16 The new contract began in January, and it went</p> <p>17 January through June -- January through June.</p> <p>18 And then the next contract started in July --</p> <p>19 Q. Okay.</p> <p>20 A. -- or the extension. There was an</p> <p>21 extension.</p> <p>22 Q. And do you know how long that</p> | <p style="text-align: right;">Page 44</p> <p>1 a result of that certification?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: You have to prove that</p> <p>4 you have the ability to manage programs and</p> <p>5 effect change, that you can -- you can forecast</p> <p>6 budget, you can manage budget, that -- I'm</p> <p>7 sorry. I am trying to remember the</p> <p>8 application. That you had the training</p> <p>9 required. It does not mean you are a COR, but</p> <p>10 if you are a COR, it's -- they're very</p> <p>11 interrelated.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And is it correct you also have a</p> <p>14 Level 3 FAC COR certification?</p> <p>15 A. Yes.</p> <p>16 Q. And what is that?</p> <p>17 A. That means I can manage contracts</p> <p>18 over \$10 million.</p> <p>19 Q. And what did you do to obtain both</p> <p>20 of these certifications?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 THE WITNESS: Lots of training and</p> |
| <p style="text-align: right;">Page 43</p> <p>1 extension from July of 2022 went?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: I don't.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. You also hold the title of</p> <p>6 FAC-P/PM, Level 3 certified program manager; is</p> <p>7 that correct?</p> <p>8 A. That's a certification, not a title.</p> <p>9 Q. Fair. What is that certification?</p> <p>10 A. That is a required certification to</p> <p>11 manage a program above a certain budget</p> <p>12 threshold.</p> <p>13 Q. And do you know what the budget</p> <p>14 threshold is?</p> <p>15 A. High. It was required for me to</p> <p>16 serve as the -- to oversee the contract, the</p> <p>17 ICC contract.</p> <p>18 Q. So that was a required certification</p> <p>19 in your role as chief of the ICC PMO, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And what does that certification</p> <p>22 entail? What -- what expertise do you have as</p> | <p style="text-align: right;">Page 45</p> <p>1 experience.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. And when did you obtain these</p> <p>4 certifications?</p> <p>5 A. The COR -- been a COR for so long.</p> <p>6 Level 3 COR had to have been -- I was a COR for</p> <p>7 the 2000 communications contract, so it had to</p> <p>8 have been maybe 1998, 1999.</p> <p>9 And for the FAC-P/PM, I had to have</p> <p>10 it by August 2016, so mid 2016.</p> <p>11 Q. How did you come to be involved in</p> <p>12 this lawsuit?</p> <p>13 MS. ZWOLINSKI: Objection. Form.</p> <p>14 THE WITNESS: My serving as a COR on</p> <p>15 the media planning and buying order under the</p> <p>16 ICC contract required the oversight of all</p> <p>17 media planned and bought for the contract. And</p> <p>18 to promote and encourage participation and</p> <p>19 self-response in the 2020 census, that included</p> <p>20 purchasing traditional, nontraditional digital</p> <p>21 media of which Google falls within that bucket.</p> <p>22 BY MS. GOODMAN:</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 Q. Is it accurate to say that you first 2 were contacted with respect to a potential 3 lawsuit in early January of 2023? 4 MS. ZWOLINSKI: Objection. Form. 5 THE WITNESS: I honestly don't 6 recall. 7 BY MS. GOODMAN: 8 Q. Okay. Do you think it was before 9 January of 2023? 10 MS. ZWOLINSKI: Objection. 11 THE WITNESS: I don't know. 12 BY MS. GOODMAN: 13 Q. What is your -- are you aware of any 14 investigation -- not a lawsuit. I am talking 15 about an investigation -- by the United States 16 Department of Justice into Google? 17 MS. ZWOLINSKI: Objection. Form. 18 THE WITNESS: The only thing I'm 19 aware of is this. 20 BY MS. GOODMAN: 21 Q. And when you say "this," what do you 22 mean?</p> | <p style="text-align: right;">Page 48</p> <p>1 Q. And who is Mike Cannon? 2 A. Mike Cannon is -- I don't know your 3 title. I'm sorry. 4 He is -- he is one of the lawyers at 5 Commerce. 6 (Deposition Exhibit 13 was marked 7 for identification.) 8 BY MS. GOODMAN: 9 Q. Okay. I am going to hand you what 10 is marked as Exhibit 13. This is an e-mail 11 chain on which you are on bearing the Bates 12 label CENSUS-ADS-0000244816. 13 Do you recall receiving this e-mail? 14 A. Yes. 15 Q. Okay. And why were you writing to 16 Jack Benson with the question: "DOC is asking 17 whether we used Google ads in our digital 18 advertising for 2020. If so, Google's terms of 19 service contemplate that an ad agency needs to 20 get the ultimate advertising client to agree to 21 the terms of service for Google ads. Can you 22 confirm that census was notified of these terms</p> |
| <p style="text-align: right;">Page 47</p> <p>1 A. This -- this particular lawsuit. 2 Q. Okay. And did anybody at the 3 Department of Commerce ask you about the census 4 bureau's use of digital advertising for the 5 2020 census? 6 MS. ZWOLINSKI: Objection. Form. 7 THE WITNESS: In terms of...? 8 BY MS. GOODMAN: 9 Q. In 2023. 10 A. Okay. 11 Q. Let's put it there. Did anybody ask 12 you from -- did anybody from the Department of 13 Commerce ask about the bureau's use of Google 14 in digital advertising for the 2020 census? 15 A. Yes. 16 MS. ZWOLINSKI: Objection to form. 17 THE WITNESS: Sorry. 18 BY MS. GOODMAN: 19 Q. Who at the census -- sorry. At the 20 Department of Commerce posed those questions to 21 you? 22 A. It would have been Mike Cannon.</p> | <p style="text-align: right;">Page 49</p> <p>1 and actually agreed"? 2 Why did you send that e-mail to Mr. 3 Benson? 4 A. I sent the e-mail to -- to Mr. 5 Benson because Reingold was the subcontractor 6 on the ICC contract that was ultimately 7 responsible for purchasing digital ads, and I 8 wanted clar- -- I wanted verification that what 9 I thought was that particular agreement was 10 actually -- for context, because this exhibit 11 has multiple pages, on -- I guess it's a Bates 12 number -- CensusAds0000244817 between the two 13 boxes, there is a statement that talked about 14 final approval of the Order 15 media buying and 15 planning -- Media Plan Version 2.0. Hereby -- 16 hereby authorizes VMLY&R to purchase and 17 finalize all paid media for the 2020 census, 18 paid media campaign. 19 I needed to make sure that was the 20 authorization that met this requirement. 21 Q. When you say "this requirement," are 22 you referring to your e-mail to Mr. Benson</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 about agreeing to the terms of service for</p> <p>2 Google ads?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Mr. Benson -- well, first of</p> <p>5 all, Mr. Benson, he is at Reingold. What is</p> <p>6 Reingold?</p> <p>7 A. Reingold is a small business that</p> <p>8 was a subcontractor on the integrated</p> <p>9 communications contract, specifically focused</p> <p>10 on the purchase of digital advertising.</p> <p>11 Q. And when you say "they are a</p> <p>12 subcontractor," who are they a subcontractor</p> <p>13 of?</p> <p>14 A. The prime contractor of record was</p> <p>15 VMLY&R.</p> <p>16 Q. So is it accurate to say there was</p> <p>17 no contract directly between the census bureau</p> <p>18 and Reingold?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: Yes, that is correct.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 52</p> <p>1 Q. Okay. And does anything in the</p> <p>2 media authorization form that is attached to</p> <p>3 that e-mail say anything about Google?</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 THE WITNESS: Media authorization</p> <p>6 forms only provide an authorization to expend</p> <p>7 money in a specific media category, not to a</p> <p>8 specific vendor.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And so is it accurate that this</p> <p>11 media authorization form does not say anything</p> <p>12 about Google?</p> <p>13 A. Correct.</p> <p>14 Q. And is it accurate that this media</p> <p>15 authorization form does not say anything about</p> <p>16 what vendor to use for the purchase of, in this</p> <p>17 instance, digital display, programmatic,</p> <p>18 digital paid social, and digital add-opts, ad</p> <p>19 serving?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 THE WITNESS: That is correct.</p> <p>22 BY MS. GOODMAN:</p> |
| <p style="text-align: right;">Page 51</p> <p>1 Q. Mr. Ryan -- Mr. Benson of Reingold</p> <p>2 writes back: "Kendall, please see attached</p> <p>3 media authorization form example per our</p> <p>4 conversation just now."</p> <p>5 Do you recall a conversation with</p> <p>6 Mr. Benson with respect to this request to him?</p> <p>7 A. Yes.</p> <p>8 Q. And what did you and Mr. Benson</p> <p>9 discuss?</p> <p>10 A. Exactly the media authorization</p> <p>11 form.</p> <p>12 Q. And -- and so what -- well, what did</p> <p>13 Mr. Benson say in response to your questions?</p> <p>14 A. He said that every media</p> <p>15 authorization form had that -- that disclaimer</p> <p>16 in there -- or I'm not sure if it is called a</p> <p>17 disclaimer but had that note in there</p> <p>18 authorizing the particular agency to purchase</p> <p>19 advertising.</p> <p>20 As a subcontractor to VMLY&R, they</p> <p>21 had the authority to purchase advertising on</p> <p>22 behalf of the census bureau.</p> | <p style="text-align: right;">Page 53</p> <p>1 Q. Why doesn't it say anything about</p> <p>2 what vendor he used for the purchase of these</p> <p>3 categories of advertising?</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 Foundation.</p> <p>6 THE WITNESS: If we are so</p> <p>7 restrictive to direct funding to a specific</p> <p>8 vendor -- well, let me change that.</p> <p>9 We don't direct payment to a</p> <p>10 specific vendor. We ask the agencies to buy</p> <p>11 media in that -- with that -- buy that type of</p> <p>12 media, and we trust that our agencies who</p> <p>13 negotiate the best price with whichever vendors</p> <p>14 will give us or meet the requirements that we</p> <p>15 need for that particular type of media to reach</p> <p>16 the audience in the way we need to reach them.</p> <p>17 That does not mean it has to be</p> <p>18 Google. It could have been somebody else. So</p> <p>19 we do not tie their hands by specifically</p> <p>20 stating Google.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. In your conversation with Mr. Benson</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 with respect to this document we're looking at,</p> <p>2 Exhibit 13, did you say anything about the</p> <p>3 request from Department of Commerce about the</p> <p>4 use of Google ads?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 THE WITNESS: The only thing I said</p> <p>7 was in here. He did not ask any further</p> <p>8 questions. I did not offer any additional</p> <p>9 information, but I like to clarify why I am</p> <p>10 asking a question.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Okay. Do you know why the</p> <p>13 Department of Commerce was asking about the use</p> <p>14 of Google ads and digital advertising in the</p> <p>15 2020 census on January 17, 2023?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: I -- this would have</p> <p>19 had to have come out of a conversation I had</p> <p>20 with Mike and --</p> <p>21 MS. ZWOLINSKI: Objection.</p> <p>22 Objection. Privilege.</p> | <p style="text-align: right;">Page 56</p> <p>1 the ultimate -- did we agree to the terms and</p> <p>2 my understanding was that we did on the -- on</p> <p>3 the media authorization form or MAF.</p> <p>4 I -- yes, that was my understanding</p> <p>5 of the conversation.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay. Do you know why that question</p> <p>8 was being asked in and around January 17, 2023?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 Privilege.</p> <p>11 MS. GOODMAN: It's not calling for</p> <p>12 privileged communications. I'm --</p> <p>13 MS. ZWOLINSKI: It depends on which</p> <p>14 -- where is her basis for knowing what question</p> <p>15 was being asked, right? You are asking for the</p> <p>16 reason the question is being asked, and I don't</p> <p>17 -- that could be calling for privileged</p> <p>18 information.</p> <p>19 MS. GOODMAN: The way that I am</p> <p>20 asking the question is not calling for a</p> <p>21 privileged communication between Ms. Oliphant</p> <p>22 and any counsel at the Department of Commerce.</p> |
| <p style="text-align: right;">Page 55</p> <p>1 The conversation -- so the</p> <p>2 conversation, this came out of a conversation</p> <p>3 between you and Mike, your attorney?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MS. ZWOLINSKI: Yeah. Objection.</p> <p>6 Privilege.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Without answering with respect to --</p> <p>9 I am not asking for my particular</p> <p>10 communications between you and Mr. Cannon.</p> <p>11 My question is as what this e-mail</p> <p>12 says: "DOC is asking whether we use Google ads</p> <p>13 in our digital advertising for 2020."</p> <p>14 What is your understanding of why</p> <p>15 DOC was asking that question?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 Foundation.</p> <p>18 THE WITNESS: DOC asked a lot of</p> <p>19 questions. It could have been anything. I</p> <p>20 think it was -- my understanding is, it was</p> <p>21 just what was said. Did we actually</p> <p>22 understand, were we given -- did they give us</p> | <p style="text-align: right;">Page 57</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. My question to you is your personal</p> <p>3 understanding. Do you have a personal</p> <p>4 understanding one way or another about why this</p> <p>5 question was posed to you in and around January</p> <p>6 17, 2023?</p> <p>7 A. My understanding it was posed to me</p> <p>8 because of my involvement with the media buying</p> <p>9 for the 2020 census.</p> <p>10 Q. And do you know why Department of</p> <p>11 Commerce was asking about Google ads and</p> <p>12 digital advertising for the 2020 -- 2020 census</p> <p>13 in January of 2023?</p> <p>14 MS. ZWOLINSKI: Objection.</p> <p>15 Privilege. If --</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. If you can answer that question</p> <p>18 without relying on privileged communications --</p> <p>19 on communications between yourself and lawyers</p> <p>20 for the Department of Commerce, that's what I</p> <p>21 am asking for in your answer.</p> <p>22 A. I can't answer.</p> |

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| <p>1 Q. Is that because you only have an</p> <p>2 understanding based on privileged</p> <p>3 communications?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And with whom are those --</p> <p>6 did those privileged communications take place?</p> <p>7 A. Commerce lawyer, Mike Cannon.</p> <p>8 Q. Any lawyers from the Department of</p> <p>9 Justice?</p> <p>10 A. No.</p> <p>11 Q. Okay. Do you know what date this</p> <p>12 lawsuit was filed?</p> <p>13 A. Honestly, no.</p> <p>14 Q. It was filed on January 24, 2023.</p> <p>15 A. Okay.</p> <p>16 Q. I will state that for the record.</p> <p>17 So with that sort of time period in</p> <p>18 mind, do you recall any conversations prior to</p> <p>19 January 24, 2023, with any lawyers for the</p> <p>20 Department of Justice with respect to using</p> <p>21 Google in the census's digital advertising paid</p> <p>22 media for the 2020 census?</p> | <p>1 -- strike that.</p> <p>2 What is your best recollection of</p> <p>3 when, if at all, you spoke with lawyers from</p> <p>4 the Department of Justice about the census</p> <p>5 bureau's use of Google in the 2020 census?</p> <p>6 MS. ZWOLINSKI: Objection. Form.</p> <p>7 THE WITNESS: It would have had to</p> <p>8 have been somewhere in the time frame of when</p> <p>9 the -- when the suit was filed.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Do you recall any conversations</p> <p>12 prior to January of 2023?</p> <p>13 MS. ZWOLINSKI: Objection. Form.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. I will represent to you that the</p> <p>17 United States Department of Justice has been</p> <p>18 investigating Google's advertising practices</p> <p>19 for the last three years. So over that --</p> <p>20 meaning the '21 -- 2021, 2022, 2023.</p> <p>21 In the years 2021 or 2022, do you</p> <p>22 recall any conversation with any lawyer from</p> |
| Page 59 | Page 61 |
| <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Is it typical in your day-to-day</p> <p>5 work to speak with lawyers from the Department</p> <p>6 of Justice?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: I do not speak to</p> <p>9 anybody from Justice that -- I don't -- no, it</p> <p>10 is not.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And so if you did speak with lawyers</p> <p>13 from the Department of Justice, is that</p> <p>14 something you might remember because it is not</p> <p>15 usual in the course of your work?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 THE WITNESS: I may remember</p> <p>18 speaking to them. I may not necessarily</p> <p>19 remember timing.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. And do you have any</p> <p>22 recollection of a timing -- the timing during</p> | <p>1 the Department of Justice about census bureau's</p> <p>2 use of Google for the 2020 census?</p> <p>3 A. No.</p> <p>4 MS. ZWOLINSKI: Objection. Form.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. So as of January 17, 2023, that we</p> <p>7 -- that you sent this e-mail to Mr. Benson, at</p> <p>8 this time, did you anticipate participating in</p> <p>9 litigation on behalf of the United States</p> <p>10 against Google?</p> <p>11 MS. ZWOLINSKI: Objection. Form.</p> <p>12 THE WITNESS: I did not.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. At this time in January of 2023, did</p> <p>15 you have any knowledge or awareness of any</p> <p>16 investigation by the Department of Justice of</p> <p>17 -- of Google with respect to its advertising</p> <p>18 businesses?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 THE WITNESS: Can you be more</p> <p>21 specific?</p> <p>22 BY MS. GOODMAN:</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 Q. Have you ever -- strike that.</p> <p>2 To what extent, if any, were you</p> <p>3 aware in January of 2023, that the Department</p> <p>4 of Justice Antitrust Division was investigating</p> <p>5 Google?</p> <p>6 MS. ZWOLINSKI: Objection. Form.</p> <p>7 THE WITNESS: I guess when they</p> <p>8 actually filed the suit.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And so prior to January 24, 2023,</p> <p>11 when the Department of Justice filed the</p> <p>12 lawsuit, you were not aware of any</p> <p>13 investigation that the antitrust division was</p> <p>14 doing of Google, correct?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: I honestly -- I don't</p> <p>17 recall.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. You don't recall any awareness of an</p> <p>20 investigation; is that right?</p> <p>21 MS. ZWOLINSKI: Objection. Form.</p> <p>22 THE WITNESS: I didn't recall when</p> | <p style="text-align: right;">Page 64</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. So for the record, your testimony is</p> <p>4 that you never sought the legal advice of the</p> <p>5 antitrust division with respect to</p> <p>6 anticompetitive on the part of --</p> <p>7 anticompetitive conduct on the part of Google;</p> <p>8 is that correct?</p> <p>9 A. That is correct.</p> <p>10 Q. Have you received a litigation hold</p> <p>11 in this case?</p> <p>12 A. Yes.</p> <p>13 Q. And approximately when did you</p> <p>14 receive that hold?</p> <p>15 A. For context. We have a lot going</p> <p>16 on. I can't honestly tell you when I first</p> <p>17 started hearing about it or when I first</p> <p>18 started -- when I got the litigation hold.</p> <p>19 If I go through my e-mail, I can</p> <p>20 tell you, but off the top of my head, we have</p> <p>21 way too many deadlines that we are trying to</p> <p>22 meet for this to be -- until it became a big</p> |
| <p style="text-align: right;">Page 63</p> <p>1 the lawsuit was filed, so the timing, I can't</p> <p>2 -- no. I don't recall. I don't -- I'm not</p> <p>3 aware.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Prior to -- strike that.</p> <p>6 In the course of your work as the</p> <p>7 COR for Order 15, did you ever form a view that</p> <p>8 Google's -- Google was engaging in</p> <p>9 anticompetitive conduct?</p> <p>10 MS. ZWOLINSKI: Objection. Form.</p> <p>11 THE WITNESS: No, I did not.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And did you ever seek the legal</p> <p>14 advice of the antitrust division with respect</p> <p>15 to any anticompetitive conduct on the part of</p> <p>16 Google?</p> <p>17 MS. ZWOLINSKI: Objection. Form and</p> <p>18 privileged.</p> <p>19 MS. GOODMAN: It's a yes or no</p> <p>20 question. It's not privileged. I am asking</p> <p>21 whether she sought legal advice.</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p> | <p style="text-align: right;">Page 65</p> <p>1 thing, a real thing, for it -- it just -- it</p> <p>2 just seemed like it was information seeking, so</p> <p>3 I don't know.</p> <p>4 MS. ZWOLINSKI: Counsel, we've been</p> <p>5 going over -- we've been going for over an</p> <p>6 hour. Can we take a break.</p> <p>7 MS. GOODMAN: Yeah, once I finish</p> <p>8 this line of questioning, I am happy to break.</p> <p>9 MS. ZWOLINSKI: How much time do you</p> <p>10 anticipate that line of questioning taking?</p> <p>11 MS. GOODMAN: A few more minutes.</p> <p>12 MS. ZWOLINSKI: Okay.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. You -- in your prior answer, you</p> <p>15 said that it seemed like it was just</p> <p>16 information seeking.</p> <p>17 What did you mean by that?</p> <p>18 MS. ZWOLINSKI: Objection. Form.</p> <p>19 THE WITNESS: We get asked questions</p> <p>20 all the time. It was just responding to a</p> <p>21 request.</p> <p>22 BY MS. GOODMAN:</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 Q. When you say "it was just responding</p> <p>2 to a request," you are talking about what</p> <p>3 specifically?</p> <p>4 A. We can go back to the e-mail that</p> <p>5 you provided, Bates census ad 0000244816. I</p> <p>6 was asked a question. I followed up to make</p> <p>7 sure that my answer -- that the answer I</p> <p>8 thought was correct was actually correct. This</p> <p>9 is standard procedures.</p> <p>10 Q. And when you say "standard</p> <p>11 procedures," can you elaborate?</p> <p>12 A. If I am unsure of the answer -- we</p> <p>13 don't purchase media. So if I am unsure of the</p> <p>14 answer, I go back to the media buyers to</p> <p>15 clarify before I provide an answer to whoever</p> <p>16 is requesting that information.</p> <p>17 Q. And when you receive a request from</p> <p>18 the Department of Commerce, is that a standard</p> <p>19 occurrence as well?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 THE WITNESS: For clarity, are you</p> <p>22 asking is it -- is it a standard occurrence for</p> | <p style="text-align: right;">Page 68</p> <p>1 THE WITNESS: Until the lawsuit was</p> <p>2 filed and I was asked to participate --</p> <p>3 formally asked to participate.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And so is it fair to say you were</p> <p>6 formally asked to participate after the lawsuit</p> <p>7 was filed?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you recall who asked you to</p> <p>12 participate in the lawsuit?</p> <p>13 MS. ZWOLINSKI: Objection.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: Small group, but I'm</p> <p>16 not sure who.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. When you say "a small group," is</p> <p>19 there sort of a group of potential people that</p> <p>20 you are thinking of, it might have been one of</p> <p>21 them?</p> <p>22 A. No. I am really thinking about</p> |
| <p style="text-align: right;">Page 67</p> <p>1 me to receive requests from the Department of</p> <p>2 Commerce?</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Yes.</p> <p>5 A. Yes.</p> <p>6 Q. And is it a standard occurrence to</p> <p>7 receive -- strike that.</p> <p>8 Earlier in a prior answer, you also</p> <p>9 said that -- when I asked you when you received</p> <p>10 a litigation hold, you said that you receive</p> <p>11 multiple requests and lots of things are going</p> <p>12 on and you don't recall, but you -- do you</p> <p>13 recall that testimony?</p> <p>14 MS. ZWOLINSKI: Objection to form.</p> <p>15 THE WITNESS: That was when I was</p> <p>16 giving you context.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. And you also said "until it</p> <p>19 became a big thing, a real thing."</p> <p>20 What -- what were you referring to</p> <p>21 there?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p> | <p style="text-align: right;">Page 69</p> <p>1 this.</p> <p>2 It would have been legal counsel</p> <p>3 through commerce, Mike Cannon.</p> <p>4 Q. And as of January 17, 2023, in</p> <p>5 Exhibit 13 that we are looking at, had you been</p> <p>6 asked to formally participate in the lawsuit by</p> <p>7 that -- around that time?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. When you say you don't recall, do</p> <p>12 you mean, I don't recall being asked prior to</p> <p>13 January 17, 2023 to participate in this</p> <p>14 lawsuit?</p> <p>15 A. Define "participation."</p> <p>16 Q. Well, how do you understand it?</p> <p>17 A. Anytime -- my understanding of</p> <p>18 participation is actually getting to the point</p> <p>19 where I am here doing a deposition. That is</p> <p>20 what I am considering participation.</p> <p>21 Q. Would you also consider</p> <p>22 participation in signing off on interrogatory</p> |

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| <p>1 responses?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 MS. ZWOLINSKI: Objection.</p> <p>5 THE WITNESS: Sorry.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Would you also consider</p> <p>8 participation collecting documents?</p> <p>9 A. I consider collecting documents</p> <p>10 responding to a request which is what we do all</p> <p>11 the time. That does not necessarily mean</p> <p>12 participation.</p> <p>13 Q. Do you respond -- have you responded</p> <p>14 to any requests to collect documents where the</p> <p>15 requests were made by the Department of</p> <p>16 Justice?</p> <p>17 MS. ZWOLINSKI: Objection. Form,</p> <p>18 and objection. Privilege.</p> <p>19 MS. GOODMAN: I am asking whether</p> <p>20 she had -- whether Ms. Oliphant has had to</p> <p>21 collect documents at the request of the</p> <p>22 antitrust division of the Department of</p> | <p>1 (A short recess was taken.)</p> <p>2 THE VIDEOGRAPHER: Going back on the</p> <p>3 record. The time is 11:08.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Ms. Oliphant, did you discuss the</p> <p>6 substance of your deposition with your counsel</p> <p>7 on the break?</p> <p>8 MS. ZWOLINSKI: You can say that --</p> <p>9 just one second. Sorry.</p> <p>10 MS. GOODMAN: It's again a yes or no</p> <p>11 question.</p> <p>12 MS. ZWOLINSKI: That isn't really</p> <p>13 the relevant factor. Let me -- you can answer</p> <p>14 that question but don't discuss the substance</p> <p>15 of anything that we discussed.</p> <p>16 You can answer whether or not you</p> <p>17 discussed your deposition during the break, but</p> <p>18 none of the substance.</p> <p>19 THE WITNESS: Can you be more</p> <p>20 specific in -- what do you mean. What do you</p> <p>21 mean by discussing the deposition?</p> <p>22 BY MS. GOODMAN:</p> |
| Page 71 | Page 73 |
| <p>1 Justice. That is not -- it's a yes or no</p> <p>2 question. It does not call for privileged</p> <p>3 legal advice or any fact or opinion or work</p> <p>4 product. She can answer that question.</p> <p>5 MS. ZWOLINSKI: You can answer.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. And when approximately in time do</p> <p>9 you recall receiving any requests to collect</p> <p>10 documents from the antitrust division of the</p> <p>11 Department of Justice?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Sitting here today, do you</p> <p>14 recall any request to you to participate in</p> <p>15 this lawsuit in the way that we have described</p> <p>16 it prior to January 24, 2023?</p> <p>17 MS. ZWOLINSKI: Objection. Form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 MS. GOODMAN: Okay. We can take a</p> <p>20 break now.</p> <p>21 THE VIDEOGRAPHER: Going off the</p> <p>22 record. The time is 10:49.</p> | <p>1 Q. Did you discuss with your counsel on</p> <p>2 the break the matters to which you had</p> <p>3 testified in the previous hour sitting here in</p> <p>4 this deposition?</p> <p>5 A. No.</p> <p>6 Q. So earlier, we talked about a master</p> <p>7 contract.</p> <p>8 Do you -- what is the official name</p> <p>9 of that master contract for the 2020 census?</p> <p>10 A. It is the 2020 census integrated</p> <p>11 communications contract.</p> <p>12 Q. For shorthand, can we call that the</p> <p>13 master contract today?</p> <p>14 A. You sure can.</p> <p>15 Q. And that contract -- the master</p> <p>16 contract was issued to Young & Rubicam; is that</p> <p>17 correct?</p> <p>18 A. Yes. And you'll note that at some</p> <p>19 point, they changed their name to VMLY&R.</p> <p>20 Q. What is the best acronym to use</p> <p>21 today for --</p> <p>22 A. Prime.</p> |

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| <p style="text-align: right;">Page 294</p> <p>1 explain what you mean by that?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: Most -- the site</p> <p>4 directs, we had a pretty good understanding of</p> <p>5 which sites they were going to directly because</p> <p>6 it was -- they -- we worked hard for</p> <p>7 integrations and added value and thing like --</p> <p>8 and things like that. If it was a site that</p> <p>9 didn't ring a bell, it was an obscure site, by</p> <p>10 obscure, I mean I just don't know about the</p> <p>11 site, not like I know every site, but it would</p> <p>12 be safe to assume it was -- it doesn't matter.</p> <p>13 Really didn't matter how they got</p> <p>14 the ad. It was on this site, and this is the</p> <p>15 audience that it was trying to reach.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. To your knowledge, did the census</p> <p>18 bureau ever obtain a list of all of the</p> <p>19 websites on which any census ad was placed?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 THE WITNESS: I don't recall.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 296</p> <p>1 does it pay money to an ad exchange or serving</p> <p>2 platform who then disseminates the ads?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: It may go both ways.</p> <p>6 I'm not sure.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. I will hand you Exhibit 25.</p> <p>9 I am going out of order. Sorry.</p> <p>10 CENSUS-ADS-204155 through 156.</p> <p>11 (Deposition Exhibit 25 was marked</p> <p>12 for identification.)</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. This is an e-mail you</p> <p>15 received from Mr. Benson on March 3, 2020.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And he is forwarding to you and</p> <p>19 others an e-mail he received from Michael</p> <p>20 Westervelt at Google.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> |
| <p style="text-align: right;">Page 295</p> <p>1 Q. Is that something that would have</p> <p>2 been something -- is that the kind of list you</p> <p>3 would want to have in your role as order</p> <p>4 manager on Order 15?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 THE WITNESS: It -- given the sheer</p> <p>7 volume, no.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. And to your knowledge, did the</p> <p>10 subcontractor responsible for media buys, buy</p> <p>11 the advertising placement directly from those</p> <p>12 websites?</p> <p>13 MS. ZWOLINSKI: Objection. Form.</p> <p>14 THE WITNESS: The subcontractor</p> <p>15 responsible for digital media buys would buy</p> <p>16 directly from the sites if it was site direct.</p> <p>17 If it was programmatic, it would go through an</p> <p>18 ad serving thing.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. And so if it's programmatic, to your</p> <p>21 knowledge, does the subcontractor pay money to</p> <p>22 the site owner on which the ad is served, or</p> | <p style="text-align: right;">Page 297</p> <p>1 Q. Okay. And Mr. Benson thought it --</p> <p>2 you might find it interesting that Google is</p> <p>3 saying: "We have reached 214 million unique</p> <p>4 users, approximately 65 percent of the</p> <p>5 population, on average four-plus times since we</p> <p>6 launched digital."</p> <p>7 Do you see that?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Do you recall receiving this e-mail?</p> <p>13 A. No, but --</p> <p>14 Q. And you see in the chart at the</p> <p>15 bottom, that shows DV360 reaching 214 million</p> <p>16 individuals and then Twitter, U.S. Today,</p> <p>17 Nextdoor, NBC and Facebook also reaching</p> <p>18 various numbers of unique users, right?</p> <p>19 MS. ZWOLINSKI: Objection to form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Is it -- so looking at this</p> |

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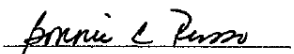
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| <p style="text-align: right;">Page 298</p> <p>1 document, do you have an understanding now of</p> <p>2 what DV360 is?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 THE WITNESS: My understanding would</p> <p>5 be it's used to serve ads.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Okay.</p> <p>8 A. Google uses it to serve ads.</p> <p>9 Q. Okay. And so do you see in this</p> <p>10 document then that the reach for the census --</p> <p>11 strike that.</p> <p>12 What is your reaction to the news</p> <p>13 that Google is saying you have reached 214</p> <p>14 million unique users as of March 3, 2020?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: That's a good thing.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. I'm sorry?</p> <p>19 A. That's a good thing.</p> <p>20 Q. And did Google help the census</p> <p>21 bureau obtain its advertising goals?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p> | <p style="text-align: right;">Page 300</p> <p>1 Q. Okay. But just in terms of the</p> <p>2 course of your experience working on Order 15,</p> <p>3 does any one particular advertising mechanism</p> <p>4 stand out to you as one that was particularly</p> <p>5 effective in helping the census bureau obtain</p> <p>6 its goals?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: They really all -- if</p> <p>9 they didn't work together, because they all</p> <p>10 bring something different to the table to reach</p> <p>11 audiences in a different way, and each audience</p> <p>12 receives or utilizes different media. It is --</p> <p>13 it is hard to point to one particular vendor</p> <p>14 and say, you know, they are responsible or they</p> <p>15 had the greatest impact because while it may</p> <p>16 have an impact here, it may not have, overall,</p> <p>17 it may not have had as high of an impact.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. If you needed to figure out how much</p> <p>20 money was paid to Google through funds</p> <p>21 allocated under the Order 15 contract, how</p> <p>22 would you go about doing that?</p> |
| <p style="text-align: right;">Page 299</p> <p>1 THE WITNESS: The combination of</p> <p>2 Google and all of our advertisers helped us</p> <p>3 obtain our goals.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And was there any one digital</p> <p>6 tool in your toolkit from your point of view</p> <p>7 that particularly aided in the meeting of the</p> <p>8 goals?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 THE WITNESS: They all had a part in</p> <p>11 helping us reach our goals.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Did any one of them have a greater</p> <p>14 role than others?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: Well, at this point in</p> <p>17 time, it is clearly Google, but this is just a</p> <p>18 snapshot in time so -- and this is before</p> <p>19 pandemic, so no, I have no -- I can't speak to</p> <p>20 any time later without a similar type of</p> <p>21 report.</p> <p>22 BY MS. GOODMAN:</p> | <p style="text-align: right;">Page 301</p> <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: I would contact the</p> <p>3 buying agency. I would call Reingold.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Have you had to call Reingold in the</p> <p>6 course of this litigation to figure out how</p> <p>7 much money has been paid to Google?</p> <p>8 MS. ZWOLINSKI: Objection.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And to your knowledge, is there a</p> <p>12 way to figure out how much money was paid to</p> <p>13 Google for programmatic advertising?</p> <p>14 MS. ZWOLINSKI: Objection. Form.</p> <p>15 THE WITNESS: I don't have those</p> <p>16 means. Census doesn't have that. We would go</p> <p>17 directly to Reingold.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. So sitting here today, if you could</p> <p>20 only rely on the census bureau to figure out</p> <p>21 how much money was paid to Google through funds</p> <p>22 allocated in Order 15, how would you do that?</p> |

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| <p style="text-align: right;">Page 302</p> <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: The only thing we have</p> <p>4 is the post-buy analysis but it provides by</p> <p>5 category, so anything that you devise, you --</p> <p>6 you determine based upon the amount spent in</p> <p>7 that category. I mean, I don't know that</p> <p>8 anybody could come up with that efficiently,</p> <p>9 you know, come up -- it would be a really rough</p> <p>10 estimate.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. And using that post-buy analysis,</p> <p>13 would you be able to determine the various</p> <p>14 specific products or specific vendors used to</p> <p>15 purchase that type of ad?</p> <p>16 MS. ZWOLINSKI: Objection. Form.</p> <p>17 THE WITNESS: No. The post-buy</p> <p>18 analysis gives you information by audience, by</p> <p>19 media type, by -- in some cases, geography, but</p> <p>20 it does not specify vendors.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. And does it specify price?</p> | <p style="text-align: right;">Page 304</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. So in the course of Order 15, to</p> <p>3 your knowledge, did the census bureau purchase</p> <p>4 any product directly from Google?</p> <p>5 MS. ZWOLINSKI: Objection. Form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: Under Order 15 the</p> <p>8 census bureau did not purchase anything</p> <p>9 directly from Google.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And under Order 15, did the census</p> <p>12 bureau purchase any particular ad tech service</p> <p>13 directly from Google?</p> <p>14 MS. ZWOLINSKI: Objection. Form.</p> <p>15 Foundation.</p> <p>16 THE WITNESS: Under Order 15 the</p> <p>17 census bureau did not purchase any particular</p> <p>18 ad-serving technology -- I think that's what</p> <p>19 you used -- from Google.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. And did the census bureau under</p> <p>22 Order 15 purchase any open web display</p> |
| <p style="text-align: right;">Page 303</p> <p>1 MS. ZWOLINSKI: Objection. Form.</p> <p>2 THE WITNESS: Price by vendor?</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Sure.</p> <p>5 A. No. It is all aggregate</p> <p>6 information.</p> <p>7 Q. Okay. And sitting here today, do</p> <p>8 you have an understanding that the United</p> <p>9 States is seeking to obtain damages from Google</p> <p>10 in this lawsuit?</p> <p>11 MS. ZWOLINSKI: Objection. Form.</p> <p>12 THE WITNESS: I'm not sure what the</p> <p>13 United States is trying to get from Google.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Have you -- do you have any</p> <p>16 understanding as to whether the census bureau</p> <p>17 overpaid Google in the course of the 2020</p> <p>18 census?</p> <p>19 MS. ZWOLINSKI: Objection. Form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: I have no basis of</p> <p>22 comparison.</p> | <p style="text-align: right;">Page 305</p> <p>1 advertising directly from Google?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And under Order 15, did the census</p> <p>7 bureau pay Google directly for the use of</p> <p>8 DV360?</p> <p>9 MS. ZWOLINSKI: Objection. Form.</p> <p>10 Foundation.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Did the census bureau pay Google</p> <p>14 directly for the use of Google display network?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: No.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. And did the census bureau pay Google</p> <p>20 directly for the use of Google marketing</p> <p>21 platform?</p> <p>22 MS. ZWOLINSKI: Objection. Form.</p> |

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| <p>1 provided you legal advice?</p> <p>2 MS. ZWOLINSKI: Objection. Form.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And is your answer the same</p> <p>6 in January of 2023?</p> <p>7 MS. ZWOLINSKI: Objection. Form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. And in the course of your</p> <p>11 participation in this lawsuit if you've had</p> <p>12 questions about your participation in this</p> <p>13 lawsuit, have you turned to the attorneys at</p> <p>14 the antitrust division with your questions?</p> <p>15 MS. ZWOLINSKI: Objection. Form.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. To whom have you turned, if anyone?</p> <p>19 A. Commerce.</p> <p>20 Q. And is that Mr. Cannon?</p> <p>21 A. That's Mr. Cannon, yes.</p> <p>22 Q. Do you consider the lawyers for the</p> | <p>1 MS. GOODMAN: I have no further</p> <p>2 questions. I'll pass the witness.</p> <p>3 MS. ZWOLINSKI: We have no</p> <p>4 questions.</p> <p>5 MS. GOODMAN: Okay. Thank you so</p> <p>6 much for your time, Ms. Oliphant. I very much</p> <p>7 appreciate it.</p> <p>8 THE WITNESS: You're welcome. Thank</p> <p>9 you.</p> <p>10 THE VIDEOGRAPHER: Off the record.</p> <p>11 MS. GOODMAN: Yes.</p> <p>12 THE VIDEOGRAPHER: This marks the</p> <p>13 end of the deposition of Kendall Oliphant. We</p> <p>14 are going off the record at 18:24.</p> <p>15 (Whereupon, the proceeding was</p> <p>16 concluded at 6:24 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> |
| Page 335 | Page 337 |
| <p>1 antitrust division to be lawyers for the census</p> <p>2 bureau?</p> <p>3 MS. ZWOLINSKI: Objection. Form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I do not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Why not?</p> <p>8 MS. ZWOLINSKI: Objection. Form.</p> <p>9 Foundation.</p> <p>10 THE WITNESS: Since census has their</p> <p>11 own lawyers and we have commerce lawyers, and I</p> <p>12 believe the commerce lawyers would be more --</p> <p>13 more sort of categorized in that way versus</p> <p>14 DOJ.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. And is your answer the same</p> <p>17 with respect to your participation in this</p> <p>18 lawsuit as a representative of the census</p> <p>19 bureau?</p> <p>20 MS. ZWOLINSKI: Objection. Form.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: Yes.</p> | <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Bonnie L. Russo, the officer before</p> <p>3 whom the foregoing deposition was taken, do</p> <p>4 hereby certify that the witness whose testimony</p> <p>5 appears in the foregoing deposition was duly</p> <p>6 sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand and thereafter</p> <p>8 reduced to computerized transcription under my</p> <p>9 direction; that said deposition is a true</p> <p>10 record of the testimony given by said witness;</p> <p>11 that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to the action in</p> <p>13 which this deposition was taken; and further,</p> <p>14 that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties</p> <p>16 hereto, nor financially or otherwise interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19 </p> <p>20 Notary Public in and for</p> <p>21 the District of Columbia</p> <p>22 My Commission expires: August 14, 2025</p> |

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HIGHLY CONFIDENTIAL

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| <p style="text-align: right;">Page 338</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, KENDALL OLIPHANT, do hereby certify that</p> <p>3 I have read the foregoing transcript of my</p> <p>4 testimony taken on 8/9/23, and further certify</p> <p>5 that it is a true and accurate record of my</p> <p>6 testimony (with the exception of the</p> <p>7 corrections listed below):</p> <table border="0"> <tr> <td>8 Page</td> <td>Line</td> <td>Correction</td> </tr> <tr><td>9 _____</td><td>_____</td><td>_____</td></tr> <tr><td>10 _____</td><td>_____</td><td>_____</td></tr> <tr><td>11 _____</td><td>_____</td><td>_____</td></tr> <tr><td>12 _____</td><td>_____</td><td>_____</td></tr> <tr><td>13 _____</td><td>_____</td><td>_____</td></tr> <tr><td>14 _____</td><td>_____</td><td>_____</td></tr> <tr><td>15 _____</td><td>_____</td><td>_____</td></tr> <tr><td>16 _____</td><td>_____</td><td>_____</td></tr> <tr><td>17 _____</td><td>_____</td><td>_____</td></tr> </table> <p>18 _____</p> <p>19 KENDALL OLIPHANT</p> <p>20 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>21 THIS _____DAY OF _____, 2023.</p> <p>22 _____ (NOTARY PUBLIC) MY COMMISSION EXPIRES: Job No. CS6031956</p> | 8 Page | Line | Correction | 9 _____ | _____ | _____ | 10 _____ | _____ | _____ | 11 _____ | _____ | _____ | 12 _____ | _____ | _____ | 13 _____ | _____ | _____ | 14 _____ | _____ | _____ | 15 _____ | _____ | _____ | 16 _____ | _____ | _____ | 17 _____ | _____ | _____ | |
| 8 Page | Line | Correction | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| <p style="text-align: right;">Page 339</p> <p>1 Rachel Zwolinski, Esq.</p> <p>2 rachel.zwolinski@usdoj.gov</p> <p>3 August 10, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/9/2023, Kendall Oliphant (#6031956)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

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